

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

PAUL HARKER,	:	CASE NO. 1:17CV00830
	:	
Plaintiff,	:	JUDGE SUSAN DLOTT
	:	
v.	:	MAGISTRATE JUDGE KAREN L.
	:	LITKOVITZ
	:	
MIAMI UNIVERSITY, et al.,	:	MOTION TO DISMISS OF
	:	DEFENDANTS CHUCK MARTIN,
Defendants.	:	STEVEN BROCKELBANK, AND
	:	DAVID SAYLER

Pursuant to Fed. R. Civ. P. 12(b)(1) and 12(b)(6), Defendants Chuck Martin, Steven Brockelbank, and David Sayler (the “Individual Defendants”) move this Court for an Order dismissing Counts I and II of the Complaint. The Complaint fails to state a claim upon which relief may be granted against the Individual Defendants. Individual public employees sued in either their individual or official capacity are not “employers” subject to liability under the Family and Medical Leave Act.

Respectfully submitted,

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MEMORANDUM IN SUPPORT

I. INTRODUCTION AND FACTUAL ALLEGATIONS

Plaintiff Paul Harker has filed an action under the Family & Medical Leave Act (29 U.S.C. §§ 2615(a)(1) and (a)(2)), against Miami University and three Individual Defendants. This motion is directed toward the claims against the Individual Defendants because they are not subject to suit under the FMLA.

II. STANDARD OF REVIEW

In response to a motion to dismiss, this Court will construe the Complaint in the light most favorable to the Plaintiff, and accept all of the Complaint's factual allegations as true. This Court must also determine whether the facts alleged state "a plausible claim for relief." *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009). The Complaint does not state a plausible claim for relief, in light of the Sixth Circuit's decision in *Mitchell v. Chapman*, 343 F.3d 811 (6th Cir. 2003).

III. ANALYSIS

A. Count I (Seeking Damages For Alleged Violation of FMLA Rights) Fails To State A Claim Against The Individual Defendants In Their Individual Capacity.

Count I is a claim that all of the Defendants took action against Plaintiff for exercising his FMLA rights under 29 U.S.C. § 2615(a)(1). Complaint, ¶¶ 61-66 [ECF Doc. No. 1]. Under current caselaw, Count I fails to state a claim against the Individual Defendants. Only 'employers' are liable for FMLA violations. *Mitchell v. Chapman*, 343 F.3d 811, 832 (6th Cir. 2003) ("[T]he FMLA's individual liability provision does not extend to public agencies."). Individual employees of public agencies are not 'employers' for purposes of FMLA liability. *Id.*; see also *Black v. Hamilton Cty. Pub. Def. Comm'n*, S.D. Ohio No. 1:12-CV-503, 2015 WL 3903706, *10 (Litkovitz, Magistrate Judge), *report and recommendation adopted*, S.D. Ohio No. 1:12CV503, 2015 WL 5698503 (Dlott, Judge).

Plaintiff concedes the bar presented by *Mitchell* and filed the damage claims against the individuals merely “to preserve the issue.” *See* Complaint, ¶ 6, fn. 1 [ECF Doc. No. 1].

B. Count II (Seeking Damages For Alleged Retaliation For The Exercise Of FMLA Rights) Fails To State A Claim Against The Individual Defendants In Their Individual Capacity.

Count II is a claim brought against all the defendants for alleged retaliation against Plaintiff for exercising his FMLA rights under 29 U.S.C. § 2615(a)(2). *Id.* ¶¶ 67-74. *Mitchell* bars FMLA retaliation claims against individual employees of public agencies as well. *See Mitchell*, 343 F.3d at 832. Accordingly, the Individual Defendants hereby move to dismiss Count II as well.

C. All Claims Brought Against The Individual Defendants In Their Official Capacity Are Barred As A Matter of Law.

Finally, Plaintiff also seeks equitable relief against the Individual Defendants in their official capacity. Complaint, ¶¶ 6-8. Official capacity claims are treated as claims against the public entity itself. *Kentucky v. Graham*, 473 U.S. 159, 165-66 (1985). Where a public entity has been named a defendant, official capacity claims against the individual employees of that defendant are redundant and must be dismissed. *See id.* at 166 (“As long as the government entity receives notice and an opportunity to respond, an official-capacity suit is, in all respects other than name, to be treated as a suit against the entity.”).

These official capacity claims against the Individual Defendants must be dismissed, because their employer (Miami University) is also a named Defendant. *Id.* (“[A] plaintiff seeking to recover on a damages judgment in an official-capacity suit must look to the government entity itself.”).

IV. CONCLUSION

In light of *Mitchell* and *Graham*, both counts of the Complaint against the Individual Defendants must be dismissed, as a matter of law.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on February 9, 2018, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification to all counsel of record.

/s/ Thomas B. Allen (0063956)